



November 10, 1999

Ms. Katherine Minter Cary
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR99-3206

Dear Ms. Cary:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 128892.

The Office of the Attorney General (the "OAG") received a request for various information regarding Local Law Enforcement Block Grants. You claim that portions of the requested information are excepted from disclosure under sections 552.103, 552.106, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103(a) excepts from required public disclosure information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991). The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 (1986) and

authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish *concrete* evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

You argue that one of the documents at issue establishes that the OAG may reasonably anticipate litigation to which the records at issue relate. Having reviewed this document and your arguments, it is our opinion that you have not shown that litigation is reasonably anticipated.¹ Therefore, none of the information may be withheld under section 552.103.

Section 552.107(1) incorporates the attorney-client privilege. It protects information “that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.” *See* Open Records Decision No. 574 (1990). In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney’s legal advice and confidential attorney-client communications. *Id.* Accordingly, these two classes of information are the only information contained in the records at issue that may be withheld pursuant to the attorney-client privilege. We have marked those portions of the information at issue which you may withhold under section 552.107(1).

Section 552.111 excepts interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity’s policymaking process. Open Records Decision No. 615 (1993). Section 552.106 protects drafts and working papers involved in the preparation of proposed legislation. The purpose of the section 552.106 exception is similar to that of section 552.111: to encourage frank discussion on policy matters between the subordinates or advisors of a legislative body and the legislative body and to thereby protect the internal “deliberative” or policy-making processes of a governmental body. Open Records Decision No. 460 (1987). Like section 552.111, section 552.106 does not except purely factual material; rather, it excepts only policy judgments, recommendations, and proposals involved in the preparation of proposed legislation.

In our opinion, any portions of the information at issue which might fall within the scope of sections 552.106 or 552.111 are included in the information we have permitted you to withhold under section 552.107(1). No additional information may be withheld under sections 552.106 or 552.111.

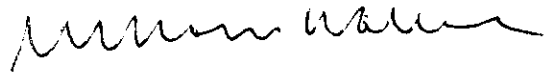
We have, however, marked information in one of the submitted documents which must be withheld under section 552.117(1), which protects home addresses of government employees

¹Since we permit the document in question to be withheld under section 552.107(1), *see infra*, we refrain from discussing its contents in detail in this ruling.

who have opted under section 552.021 to prohibit public access to such information. Except for the portions of the information we have indicated you may withhold under sections 552.107(1) and 552.117(1), you must release the information at issue.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read 'William Walker', with a stylized, cursive script.

William Walker
Assistant Attorney General
Open Records Division

WMW/ljp

Ref: ID# 128892

Encl. Submitted documents

cc: Mr. Hugh W. Davis, Jr.
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102-6311
(w/o enclosures)